

Opinion No. 248.

Elections—Direct Primary—Nominations—Write-in Candidates.

HELD: Write-in candidates must qualify by filing a declaration of acceptance and pay the statutory filing fee within ten (10) days after the date on which the Primary Election was held.

August 5, 1940.

Mr. Addis McGrath
County Clerk and Recorder
Silver Bow County
Butte, Montana

Dear Sir:

You have asked as to the time limit in which a candidate who receives a party nomination by having his name written in on the primary ballot may

accept the nomination and qualify as the party nominee for the general election.

Section 654, Revised Codes of Montana, 1935, as amended by Chapter 181, Laws of 1937, declares:

"In all primary nominating elections in this state, under the provisions of this law, the person having the highest number of votes for nomination to any office shall be deemed to have been nominated by his political party for that office."

When a person whose name is written in receives the highest number of votes he may become a candidate by complying with the following provision of Section 640, Revised Codes of Montana, 1935:

"Any person receiving the nomination by having his name written in on the primary ballot, and desiring to accept such nomination, shall file with the secretary of state, county clerk, or city clerk, a written declaration indicating his acceptance of said nomination within ten days after the election at which he receives such nomination, and at the same time he shall pay to the officer with whom such declaration of acceptance is filed the fee above provided for filing primary nominating petition for such office."

The statute is plain and unambiguous and clearly states that a declaration of acceptance and the statutory fee must be filed with the appropriate officer within ten days after the election at which he received such nomination. Thus, this year the day of election at which the person received the nomination was July 16th. Then, his written declaration of acceptance and the statutory fee would have to be filed before the close of business on July 26th. The statute is exclusive and the candidate must strictly comply with its terms. In declaring, "No candidate receiving a nomination at a primary election as above provided shall have his name printed on the official ballot for the general election without complying with the provisions of this section," Section 640 lays down the only method by which a candidate can run as a nominee of a party participating in the primary election.